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TRUSTEES OF THE DIRECTORS
7 GUILD OF AMERICA - PRODUCER
PENSION PLAN AND TRUSTEES OF
8 THE DIRECTORS GUILD OF
AMERICA - PRODUCER HEALTH
9 PLAN

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

13 TRUSTEES OF THE DIRECTORS
14 GUILD OF AMERICA - PRODUCER
PENSION PLAN AND TRUSTEES
15 OF THE DIRECTORS GUILD OF
AMERICA - PRODUCER HEALTH
16 PLAN,

17 Plaintiffs,

18 vs.

19 LAKESHORE ENTERTAINMENT
GROUP, LLC, a California limited
20 liability company; and LAKESHORE
ENTERTAINMENT CORP., a
21 Delaware Corporation

22 Defendants.

CASE NO.

**COMPLAINT TO COMPEL AUDIT
ENTRY AND TO RECOVER
UNPAID CONTRIBUTIONS
PURSUANT TO THE EMPLOYEE
RETIREMENT INCOME
SECURITY ACT OF 1974 AND
LMRA SECTION 185**

[29 U.S.C. §§ 185(a) and 1132(e)(1)]

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24 Plaintiff Trustees of the Directors Guild of America – Producer Pension Plans
25 and Plaintiff Trustees of the Directors Guild of America – Producer Health Plan
26 (collectively, “Plan Trustees” or “Plaintiffs”) complain and allege as follows:

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JURISDICTION AND VENUE

1. This is an action by the Plan Trustees for breach of a collective bargaining agreement between an employer and a labor organization representing employees in an industry affecting commerce pursuant to Section 301(a) of the Labor-Management Relations Act (“LMRA”) [29 U.S.C. § 185(a)], and to compel an audit entry and collect unpaid contributions pursuant to Sections 502(a)(3) and 515 of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) [29 U.S.C. §§ 1132(a)(3) and 1145]. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, ERISA Section 502 [29 U.S.C. § 1132(a)(3), (e)(1)], and Section 301(a) of the LMRA.

2. Such jurisdiction exists without respect to the amount in controversy or the citizenship of the parties, as provided in ERISA § 502(f) [29 U.S.C. § 1132(f)] and LMRA § 301(a) [29 U.S.C. § 185(a)].

3. Venue is based on the location of the office in which the Directors Guild of America – Producer Pension and Health Plans (the “Plans”) are located and administered, which is in the Central District of California, Western Division. This venue is appropriate under ERISA § 502(e)(2) [29 U.S.C. § 1132(e)(2)] and LMRA § 301(a) [29 U.S.C. § 185(a)].

PARTIES

4. The Plans are “employee benefit plans” within the meaning of ERISA § 3(3) [29 U.S.C. § 1002(3)] that were created pursuant to written trust agreements between the Directors Guild of America, Inc. (the “DGA”), and motion picture, television, and commercial employers. These agreements are known as the Directors Guild of America – Producer Pension Trust Agreement and the Directors Guild of America – Producer Health Trust Agreement (collectively, the “Trust Agreements”).

5. The Plans are “multiemployer plans” within the meaning of ERISA § 3(37)(A) [29 U.S.C. § 1002(37)(A)] in that more than one employer is required to

1 contribute to the Plans and the Plans are maintained pursuant to collective
2 bargaining agreements between the DGA and motion picture, television, and
3 commercial producers. Plan Trustees administer the Plans and have a fiduciary duty
4 under ERISA to preserve and maintain the Plans' trust assets.

5 6. At all times material herein, the DGA has been a labor organization
6 representing persons employed in the production of motion picture and television
7 programming, which is an industry affecting commerce within the meaning of
8 LMRA § 501(1) [29 U.S.C. § 142(1)].

9 7. The Trust Agreements are maintained for the purposes of providing
10 their participants and beneficiaries with retirement benefits as well as medical,
11 surgical, and hospital benefits in the event of sickness, accident, disability, or death.
12 Under the Trust Agreements, Plan Trustees have control and authority over the
13 Plans and their assets including, without limitation, the authority to file actions to
14 protect the Plans' assets. Plan Trustees have standing to file this action to compel
15 audit entry as fiduciaries defined in ERISA § 502(a)(3) [29 U.S.C. § 1132(a)(3)] and
16 the Trust Agreements.

17 8. Defendant Lakeshore Entertainment Group ("Lakeshore Group") is and
18 at all times relevant herein has been a limited liability company organized and
19 existing under the laws of the State of California with its principal place of business
20 in the State of California, and is an "employer" within the meaning of ERISA § 3(5)
21 [29 U.S.C. § 1002(5)] and LMRA § 501(3) [29 U.S.C. § 142(3)]. As such,
22 Lakeshore Group is an employer as that term is used in LMRA § 301(a) [29 U.S.C.
23 § 185(a)].

24 9. Defendant Lakeshore Entertainment Corporation ("Lakeshore Corp.")
25 is and at all times relevant herein has been a corporation organized and existing
26 under the laws of the State of Delaware with its principal place of business in the
27 State of California, and is an "employer" within the meaning of ERISA § 3(5)[29
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1 U.S.C. § 1002(5)] and LMRA § 501(3) [29 U.S.C. § 142(3)]. As such, Lakeshore
2 Corp. is an employer as that term is used in LMRA § 301(a) [29 U.S.C. § 185(a)].

3 10. The Plan Trustees are informed and believe and on that basis allege that
4 Lakeshore Corp. is one of two shareholders of Lakeshore Group and was formerly
5 an entity that directly engaged in the business of film production. Collectively, the
6 entities will be referred to as “Lakeshore.”

7 11. Lakeshore has produced or caused the production of numerous motion
8 pictures (collectively, the “Projects”) by entities Lakeshore owns and/or controls
9 (“Lakeshore Production Affiliates”), all produced pursuant to the terms of written
10 collective bargaining agreement between the DGA and these Lakeshore Production
11 Affiliates, incorporating the terms of the multi-employer industry-wide collective
12 bargaining agreement between the DGA and motion picture and television
13 producers (the “Basic Agreement”). These Lakeshore Production Affiliates have
14 hired DGA-represented employees on the Projects to perform services covered by
15 the Basic Agreement.

16 12. Lakeshore has executed written agreements with the DGA in which
17 Lakeshore expressly agreed to be responsible for, and guarantee, the Production
18 Affiliates’ performance of all obligations under the Basic Agreement and Trust
19 Agreements for the Projects. By signing these written agreements with the DGA,
20 Lakeshore agreed to accept, assume, and be bound by the separate Trust Agreements
21 that established the Plans with respect to the Projects.

22 13. Pursuant to ERISA § 515 [29 U.S.C. § 1145], an employer who is
23 obligated to make contributions to a multiemployer plan under the terms of the plan
24 or a collectively bargained agreement must make said contributions in accordance
25 with the plan or collectively bargained agreement.

26 14. Pursuant to the Basic Agreement and Trust Agreements, Lakeshore is
27 required to pay pension and health contributions to the Plans based on a percentage
28 of gross receipts from the exploitation of the Projects in certain markets, including,

1 without limitation, free television, pay television, video cassette, and DVD
 2 (hereinafter, "Contributions").

3 15. Under the Basic Agreement and Trust Agreements, Plan Trustees may
 4 audit or cause the audit or inspection of Lakeshore's books and records to assess
 5 whether Lakeshore is in compliance with its obligations to remit Contributions to
 6 the Plans with respect to the Projects.

7 16. At all times material herein, and pursuant to the Trust Agreements and
 8 the Basic Agreement, Lakeshore has had an affirmative duty to provide access to the
 9 records necessary for the Plans to determine whether Lakeshore has complied with
 10 its obligation to make timely and accurate Contributions to the Plans.

11 **FIRST CAUSE OF ACTION**

12 (Failure to Comply With Audit Obligations)

13 17. Plan Trustees incorporate herein by reference all of the allegations
 14 contained in paragraphs 1 through 16 above, inclusive.

15 18. On or about January 4, 2012, Plan Trustees advised Lakeshore in
 16 writing of their intent to audit Lakeshore's Contribution payments and requested
 17 access to Lakeshore's books and records for the period of January 1, 2008 to
 18 December 31, 2011 ["Audit Period"].

19 19. Plan Trustees, by and through their auditors, made several demands on
 20 Lakeshore for the production of books and records necessary to conduct the audit.

21 20. Despite assurances to the Plan Trustees to the contrary, Lakeshore has
 22 failed to fully cooperate with the audit and has not produced all of the books and
 23 records necessary to conduct and complete the audit.

24 21. On or about August 20, 2012, Plan Trustees engaged the services of
 25 Bush Gottlieb Singer López Kohanski Adelstein & Dickinson to assist the Plans in
 26 compelling Lakeshore to comply with its audit obligations under the Basic
 27 Agreement and Trust Agreements.
 28

1 22. In October 2013, the Plans and Lakeshore, through their respective
2 legal counsel, agreed in principle to a six-month tolling agreement to permit
3 completion of the audit, but despite repeated attempts by the Plans to finalize the
4 agreement Lakeshore failed to do so.

5 23. To date, Lakeshore has failed to comply with the audit and it has failed
6 to sign the tolling agreement.

7 24. Plan Trustees are informed and believe, and on that basis allege, that
8 Lakeshore's actions, including refusing to sign a tolling agreement and its ongoing
9 failure to allow the Plans' auditors to access the books and records necessary to
10 complete the audit despite repeated requests to do so, was willful, wanton, and
11 malicious, and intended to cause injury and has caused injury to Plan Trustees.

12 25. As a result of Lakeshore's failure to permit the Plan Trustees' auditors
13 access to its books and records, the Plan Trustees are unable to verify that Lakeshore
14 has made accurate Contributions to the Plans, owed as a result of Lakeshore's
15 exploitation of the Projects and as required under the Basic Agreement and the Trust
16 Agreements.

17 26. Plan Trustees are informed and believe, and on that basis allege, that
18 there is no legal excuse for Lakeshore's refusal to cooperate with the audit and its
19 refusal to sign the tolling agreement.

20 27. Lakeshore's ongoing refusal to cooperate with the audit constitutes a
21 breach of its obligations under the Basic Agreement, the Trust Agreements, and
22 federal law ERISA Section 515 [29 U.S.C. § 1145].

23 28. Under the Trust Agreements and ERISA § 502(2)(g), if litigation is
24 necessary to compel such an audit, the employer is responsible for paying interest
25 due on any unpaid contributions discovered thereafter, and all of the Plans'
26 attorneys' fees, court costs, audit costs, and liquidated damages.

SECOND CAUSE OF ACTION

(Breach of Collective Bargaining and Trust Agreements)

(Against All Defendants)

29. Plan Trustees hereby incorporate herein by this reference paragraphs 1 through 28 above to the same effect as if set forth verbatim.

30. Under the Basic Agreement and Trust Agreements, Lakeshore and the Lakeshore Production Affiliates are obligated to make Contributions on behalf of DGA-represented employees to the Plans for the Projects during the Audit Period.

31. Plan Trustees are informed and believe, and thereon allege, that Lakeshore and the Lakeshore Production Affiliates have failed to pay to the Plans all the Contributions owed for the Projects during the Audit Period.

32. Lakeshore and the Lakeshore Production Affiliates have breached the Trust Agreements and Basic Agreement by failing and refusing to make Contributions that are owed to the Plans during the Audit Period, and by engaging in other practices inconsistent with the terms of the Basic Agreement and Trust Agreements. Plan Trustees are informed and believe and on that basis allege that Contributions are due and owing but Lakeshore and the Lakeshore Production Affiliates have failed and refused to properly pay all Contributions due to the Plans in an amount to be established at trial.

33. Under the Trust Agreements and Basic Agreement, the Plans are entitled to reimbursement of all audit fees incurred in connection with conducting an audit of Lakeshore's books and records. As a result of Lakeshore and the Production Affiliates' breach of the Trust Agreements, Basic Agreement, and ERISA, the Plans have been required to employ and compensate legal counsel to recover delinquent Contributions.

34. Plan Trustees are seeking an award for Contributions, interest due on the unpaid Contributions, liquidated damages, audit fees, and reasonable attorneys' fees in pursuing collection of the delinquent Contributions and in connection with

1 any lawsuit brought to collect delinquent Contributions and court costs. At this
 2 time, the exact amount of Contributions due and owing cannot be ascertained.
 3 These amounts will be established by proof at trial.

4 **THIRD CAUSE OF ACTION**

5 (Violation of ERISA Sections 1132(g)(2) and 1145)

6 (Against All Defendants)

7 35. Plan Trustees hereby incorporate herein by this reference paragraphs 1
 8 through 34 above to the same effect as if set forth verbatim.

9 36. Lakeshore and the Lakeshore Production Affiliates have violated
 10 ERISA Section 515 [29 U.S.C. § 1145] by underpaying Contributions that are owed
 11 to the Plans based upon Lakeshore and the Lakeshore Production Affiliates'
 12 production and distribution of the Projects during the Audit Period. Plan Trustees
 13 are informed and believe and on that basis allege that Contributions are due and
 14 owing but Lakeshore and the Lakeshore Production Affiliates have failed and
 15 refused to properly pay all Contributions due to the Plans in an amount to be
 16 established at trial.

17 37. In any action brought under ERISA Section 515 [29 U.S.C. § 1145], in
 18 addition to the interest payable on unpaid Contributions as permitted under the Trust
 19 Agreements as described above, pursuant to ERISA Section 502(g)(2) [29 U.S.C. §
 20 1132(g)(2)] if judgment is awarded in favor of the Plans, the Plans are entitled to an
 21 amount equal to the greater of (1) interest on the unpaid Contributions or (2)
 22 liquidated damages as provided for under the Trust Agreements in an amount not to
 23 exceed 20 percent (or such higher amount as may be permitted under federal or state
 24 law) of the amount the Court determines to be due in unpaid Contributions. Under
 25 the Trust Agreements, the Plans are entitled to 20 percent of the amount due in
 26 unpaid Contributions as liquidated damages.

27 38. Under the Trust Agreements and Basic Agreement, the Plans are
 28 entitled to reimbursement of all audit fees incurred in connection with conducting an

1 audit of Lakeshore's books and records. The Plans are entitled to recover these
2 audit fees pursuant to ERISA Section 1132(g)(2)(E) [29 U.S.C. § 1132(g)(2)(E)].

3 39. As a result of Lakeshore and the Lakeshore Production Affiliates'
4 breach of the Trust Agreements, Basic Agreement, and ERISA, the Plans have been
5 required to employ and compensate legal counsel to recover delinquent
6 Contributions. The Plans are entitled to recover their reasonable attorneys fees and
7 costs incurred to recover unpaid Contributions by ERISA Section 1132(g)(2)(D) [29
8 U.S.C. § 1132(g)(2)(D)].

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs pray for judgment as follows:

- 11 1. a Court order requiring Defendants and their officers, employees, and
12 agents to submit to the audit and produce all books and records requested by
13 Plaintiffs within seven (7) calendar days of the entry of an order by this Court;
- 14 2. for unpaid Contributions in an amount to be proven at trial;
- 15 2. for unpaid audit fees in an amount to be determined at trial;
- 16 3. for reasonable attorneys' fees and audit costs incurred by Plaintiffs in
17 an amount to be determined at trial;
- 18 4. for costs of suit incurred herein; and

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1 5. for additional relief as this Court deems just and proper
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3 DATED: December 4, 2013

Respectfully submitted,

4 DAVID ADELSTEIN
5 BUSH GOTTLIEB SINGER LÓPEZ
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7 A Law Corporation
8

9 By: /s/ David Adelstein

10 DAVID ADELSTEIN

Attorneys for Plaintiffs

11 TRUSTEES OF THE DIRECTORS GUILD OF
12 AMERICA - PRODUCER PENSION PLAN
13 AND TRUSTEES OF THE DIRECTORS
14 GUILD OF AMERICA - PRODUCER
15 HEALTH PLAN
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